question arises as to the admissibility of his declarations in proof of such "intention." It is only natural that his declarations, oral and written, should be frequently resorted to in discovering his state of mind, his mental attitude, when he moved to the jurisdiction.

The courts differ in their rules governing the admission of such declarations. The early Massachusetts cases [5] laid down the principle that declarations of intention to make the state in question his domicile are admissible only when they accompany, qualify, or explain acts relevant to the issue of domicile. This rule limited the declarations to those made as part of the *res gestae,* in accordance with the Verbal Act doctrine.[6] Maine has always adhered to this doctrine.[7]

Massachusetts has, however, changed its attitude on this question; [8] and its courts now admit declarations whether they accompany relevant acts or not. In *Viles* v. *Waltham,*[9] the court said: "The intention of the party removing is competent to be proved as an independent fact, and anything which tends to show his intention in making the change may be shown, if it is free from objection on other particulars. . . . Declarations which indicate the state of mind of the declarant naturally have a legitimate tendency to show the intention." This case, overthrowing the earlier doctrine in Massachusetts, has been followed in many jurisdictions.[10]

Even under this broader and more liberal rule the declarations must appear to have been made under natural circumstances and without apparent motive to deceive. Self-serving declarations and those made after the controversy has arisen are therefore excluded in all jurisdictions.[11]

N. I. S. G.

PARTNERSHIP — DISSOLUTION — PERMANENT INCAPACITY OF PARTNER—In *Barclay* v. *Barrie,*[1] the court affirmed a decree of dissolution against a copartnership not at will, before the expiration

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[5] Thorndike v. Boston, 1 Metc. 242 (Mass. 1840); Kilburn v. Bennett, 3 Metc. 199 (1841); Cole v. Cheshire, 1 Gray, 444 (1854).

[6] 3 Wigmore on Evidence, §§1727, 1784.

[7] Richmond v. Thomaston, 28 Me. 234 (1854); Belmont v. Vinalhaven, 82 Me. 524 (1890); Holyoke v. Holyoke's Estate, *supra.* In Illinois, Kreitz v. Behrensmeyer, 125 Ill. 141 (1888), follows the liberal rule, while Matzenbaugh v. People, 194 Ill. 108 (1902), appears to uphold the narrow doctrine of the early Massachusetts cases.

[8] Viles v. Waltham, 157 Mass. 542 (1893).

[9] 157 Mass. 542 (1893).

[10] Bigelow v. Bear, 64 Kan. 887 (1900); Baker v. Kelly, 41 Miss. 696 (1868); Chase v. Chase, 66 N. H. 588 (1891); Chambers v. Prince, 75 Fed. 176 (1891); *In re* Robert's Will, 8 Paige, 519 (N. Y. 1840).

[11] Watson v. Simpson, 8 La. Ann. 337 (1853); Cherry v. Slade, 2 Hawks, 400 (Eng. 1823).

[1] 102 N. E. Rep. 602 (N. Y. 1913).

of the term, at the instance of the partner continuing the business against a partner who had become incapacitated through paralysis subsequent to the formation of the agreement; upon the basis that every partner, independent of express provision, impliedly undertakes to advance the success of the copartnership by devoting to it within reasonable limits his time, efforts and ability. His copartners are entitled to this contribution and, if for any reason, he fails to fulfill his duties, they are thereby deprived of the benefits of the contract and the fruits of their joint enterprise, and equity has jurisdiction to afford the injured parties immediate relief from a situation surrounded with such serious responsibilities.[2]

By unanimous authority the elements requisite to obtain dissolution of a copartnership for a defined term, or rather of a partnership not at will, are: (*a*) complete incapacity;[3] (*b*) of a durable or probably permanent form, as opposed to fleeting, or temporary disabilities;[4] (*c*) relievable only in equity by decree for dissolution;[5] (*d*) subject under that flexible jurisdiction to a close scrutiny of the attending circumstances—the relief afforded to be governed thereby.[6]

Although insanity affords the most frequent illustration of the application of this principle, the relief is not confined to such cases, and the court may, as in the principal case, dissolve a partnership when a partner becomes in any way permanently incapable of performing his part of the copartnership contract.[7]

With regard to who may obtain such relief Lindley[8] says: "If the permanent incapacity arises from a cause other than unsoundness of mind, the court will not grant a dissolution at the instance of the person incapacitated, but the action must be brought by one of the other partners." It is submitted that this statement, while acquiesced in by a few writers and cases, is too broad, being rather by way of *dictum* and unsupported by precise authorities, except as applied to two other classes of cases where equity will decree a dissolution, viz.: (*a*) where the offending partner has been guilty

[2] Water v. Taylor, 2 V. & B. 299 (Eng. 1813); Sayer v. Bennett, 1 Cox, 107 (Eng. 1784); Anon., 2 K. & J. 441 (Eng. 1856); Casky v. Casky, 5 Ky. Law R. 775 (1884); Griswold v. Waddington, 15 Johns. 57 (N. Y. 1818); Story on Partnership (7th ed.), §297; Gow on Partnership (Amer. ed.), 268-270.

[3] Jones v. Noy, 2 My. & K. 125 (Eng. 1833); Griswold v. Waddington, *supra;* Raymond v. Vaughn, 128 Ill. 256 (1889), 4 L. R. A. 440; Besch v. Frolich, 1 Ph. Ch. 172 (Eng. 1842); Story (7th ed.), §§296-297.

[4] Sadler v. Lee, 6 Beav. 323 (Eng. 1843); Leaf v. Coles, 1 De G. M. & G. 417 (Eng. 1851); Story, §297; Lindley on Partnership (8th ed., 1912), pp. 640, 654.

[5] See cases cited n. 2, *supra;* Raymond v. Vaughn, *supra,* n. 3; Whitwell v. Arthur, 35 Beav. 142 (Eng. 1865).

[6] Henn v. Walsh, 2 Edw. Ch. 129 (N. Y. 1833); Whitwell v. Arthur, *supra,* n. 5.

[7] Leaf v. Coles, *supra,* n. 4; Jones v. Lloyd, L. R. (18 Eq.), 265, 274 (Eng. 1874).

[8] Partnership (8th ed.), 654.

of conduct prejudicial to the business; or (*b*) otherwise conducts himself so that it is not reasonably practicable for the others to carry on the business with him.[8] In these latter instances, obviously, dissolution at the instance of the partner in default would be inequitable. But, it is submitted by all the analogies and equities applicable to dissolution in cases of mental incapacity,[10] there is no basic principle for refusing like relief at the instance of one in contractual default through unavoidable physical incapacity, as in the principal case.

That valid dissolution in cases of complete incapacity of any nature may be had in no way other than by decree in equity has never been doubted in England since Lord Kenyon's ruling in *Sayer* v. *Bennett.*[11] Parsons, in his work on Partnership,[12] while recognizing the existence of the English rule, strongly advocated that "insanity, certain, complete and hopeless of itself and at once dissolves the partnership." But he is supported by only two cases,[13] apparently briefly considered; the more prevalent ruling being in accord with that of the English courts.[14]

J. C. A.

SPECIFIC PERFORMANCE—STATUTE OF FRAUDS—Whether mistake is a ground for depriving the defendant of the protection of the Statute of Frauds in a bill for specific performance is a much vexed question, and one on which there is more conflict than harmony of opinion. In *Wirtz* v. *Guthrie,*[1] the defense to a bill for specific performance of an agreement for the sale of land, was that the gross rent of the premises was not what the defendant had been lead to believe. The plaintiff then offered to prove by oral testi-

[8] Lindley: Partnership, 640, 655-658.

[10] The insane partner has the right to come into equity by committee to have the partnership dissolved upon the grounds, (*a*) of complete incapacity to perform his agreement, Jones v. Noy, *supra,* n. 3; and (*b*) as ruled in Jones v. Lloyd, *supra,* n. 7, "By the act of God that bargain (contract of copartnership) has become incapable of performance, and he is not able to exercise that supervision over the conduct of the business and care of the property" . . . necessary to protect his interest.

It is suggested that these reasons apply with equal force to cases of complete incapacity through physical disability. Furthermore the objection that the physically incapacitated partner remains *sui juris,* as contrasted with one mentally incapacitated, and therefore has means to protect himself at law, is of no great weight and is not insurmountable in equity, when it is observed that a lunatic also may sue at law by committee and has, nevertheless, relief in chancery.

[11] 1 Cox 107 (Eng. 1784).

[12] Parsons: Partnership (1st ed.), 465.

[13] Davis v. Lane, 10 R. H. 156, 161 (1839); Isler v. Baker, 6 Humph. 85 (Tenn. 1845).

[14] Raymond v. Vaughn, *supra,* n. 3; Casky v. Casky, *supra,* n. 2; Story (7th ed.), §§296-298; Henn v. Walsh, 2 Edw. Ch. 129 (N. Y. 1833).

[1] 87 Atl. Rep. 134 (N. J. 1913).